

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique,
Chief Justice

Mr. Justice Obaidul Hassan

Mr. Justice M. Enayetur Rahim

CIVIL PETITION FOR LEAVE TO APPEAL NOS.3923-3924 OF 2017 and C.P. Nos.3927-3928 OF 2017

(From the judgment and order dated 29.03.2017 passed by the High Court Division in Writ Petition Nos.9988 of 2015, 9987 of 2015, 6628 of 2016 & 10946 of 2013)

Md. Rabiul Karim.	Petitioner (In C.P. No.3923/17)
Md. Saiful Islam	Petitioner (In C.P.No.3924/17)
Md. Idris Ali	Petitioner (In C.P.No.3927/17)
Md. Anisur Rahman	Petitioner (In C.P.No.3928/17)

=Versus=

Golam Morshed Khan and others.	:	Respondents. (In C.P.3923 & 3927/17)
Md. Nurul Islam and others	:	Respondents (In C.P. 3924/17)
Secretary Ministry of Land and others:	:	Respondents (In C.P.3928/17)

For the Petitioners :	Mr. Pankaz Kumar Kundu, Advocate (with S.M. Atiqur Rahman, Advocate) instructed by Mr. Zainul Abedin, Advocate-on-Record.
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For the Respondents :	Mr. Salauddin Dolan, Senior Advocate, instructed by Mr. Md. Zahirul Islam, Advocate-on-Record.
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Date of hearing and judgment : 14-03-2022

J U D G M E N T

Hasan Foez Siddique, C. J: These Civil Petitions for Leave to Appeal are directed against the judgment and order dated 29.03.2017 passed by the High Court Division in Writ Petition No. 9988 of 2015 heard analogously with

Writ Petition Nos. 9987 of 20015, 6628 of 2016 and 10946 of 2013 making all the Rules absolute, declaring the decisions, given by the Administrative Tribunal, Bogra in A.T. Case No.126 of 2011 heard analogously with A.T. Case Nos.117 of 2011, 122 of 2011 and 124 of 2011, were without lawful authority and in an unlawful manner.

The relevant facts, for disposal of these petitions, in short, are that the writ petitioners of the above mentioned writ petitions were appointed as Surveyors in the service of the Land, Record and Survey Department under the Ministry of Land after being selected through a competitive selection process. The writ petitioner No.1 in writ petition NO. 9988 of 2015 had joined on 15.09.2005 as Surveyor in the Upazilla Land Office, Nagarkanda, Faridpur. The writ petitioner No.2 had joined on 14.11.2013 as Surveyor in the Upazilla Settlement Office, Kalia, Narail. The writ petitioner No.1 in writ petition No.6628 of 2016 Md. Nurul Islam had joined on 27.12.1993 as surveyor in the Upazilla Land Office, Barisal Sadar, Barisal in the scale of taka 1200/-. The writ respondent No.2 in all the writ petitions filed the aforesaid A.T. Cases before the Administrative Tribunal, Bogra

for a direction upon the Government to promote them to the post of Kanungo/ Sub- Assistant Settlement Officer upon inclusion of those posts in the Kanungo Recruitment Rules, 1984 with retrospective effect from 2003 as some Surveyors had been promoted in the said post. The Administrative Tribunal, Bogra, by the impugned judgment, allowed the cases and directed the Government to promote them in the posts of Kanungo/ Sub- Assistant Settlement Officer upon making necessary amendment of the Service Rules. It has been stated that the filing of the Administrative Tribunal Cases were barred by law under the provision of Section 4(2) of the Administrative Tribunal Act, 1980 (hereinafter referred to as "the Act"). No case can be filed before the Administrative Tribunal without preferring departmental appeal before the Appellate authority of the impugned order. The cases were filed in the nature of mandamus and the Tribunal has no jurisdiction to entertain such case wherein no final order was impugned. The impugned decisions of the Administrative Tribunal, which had been originated from the cases filed in violation of the specific provisions of the Act, were liable to be declared illegal, without lawful authority and those were

void ab initio. It has been further stated that the impugned decisions have been obtained by way of suppression of very important decision of the Apex Court. With the similar and identical claims earlier some employees filed writ petition No.6006 of 2002 and writ petition No.4264 of 2004, wherein both the Rules were discharged by a single judgment and order dated 15.06.2005 on the finding that the writ petitioners, who were the Mutation Assistant, Copyist cum- Bench Clerks, Record Keepers, and Peskars, could not make out a case for inclusion of their posts in the schedule of the Kanungo Recruitment Rules, 1984 as feeder posts of Kanungo. Some employees, who have been holding the post of Copyist-cum-Bench Assistant (Now Bench Clerks), had filed the case for their upgradation from category II to category I as under the Kanungo Recruitment Rules, 1984 the posts of category I has been given preferential consideration for promotion as Kanungo. The writ respondent No.2 was the petitioner No.09 in writ petition No.4264 of 2004 with almost similar and identical prayer one Record Keeper named Md. Mohibur Rahman and 6 others Copyist-cum-Bench Assistant filed Writ Petition No.8217 of 2013 and some other employees standing on the same footing to the writ

respondent No.2 filed another writ petition being No.2353 of 2013 in this Court. Those were disposed of analogously by a judgment and order dated 17.06.2014. In the said judgment, the High Court Division has categorically observed that a person interested for promotion is to enter into the zone of feeder post for making them eligible to be included in the list and unless and until the posts of the prospective promotee are included in the list of feeder posts they cannot enter into the zone of promotion. However against the said judgment and order dated 17.06.2014 passed by those writ petitions, the writ petitioners preferred in Civil Petition for Leave to Appeal No.2479 of 2014 in the Appellate Division which was dismissed for default on 08.03.2015.

The present writ petitioners when awaiting for promotion for long time, they have been deprived of getting their promotion due to the impugned decisions. The writ petitioners requested to the concerned Ministry to challenge the impugned decisions but it kept silent inexplicably and, therefore, the writ petitioners moved this Court and obtained the Rules as stated above.

The Rules were contested by the writ respondent No.2 contending that an employee could not seek promotion in the next higher post unless the post is included in the schedule of the feeder post. The post of the writ petitioners had not been included in the feeder post of Kanungo, Sub- Assistant Settlement Officer. As the post of Surveyor had not been included existing of Kanungo Recruitment Rules, the High Court Division, by the impugned judgment and order, made all the Rules absolute declaring that the decisions given by the Administrative Tribunal, Bogra in A.T. Case Nos.117 of 2011, 122 of 2011, 124 of 2011 and 126 of 2011 have been passed without lawful authority and in an unlawful manner. Against which, the leave petitioners have filed the instant leave petitions.

Mr. Pankaj Kumar Kunda and Mr. S.M. Atiqur Rahman, learned Counsel, instructed by Mr. Joynal Abedin, learned Advocate-on-Record, appeared on behalf of the petitioners and Mr. Salahuddin Dolon, learned Senior Counsel, instructed by Md. Jahurul Islam, learned Advocate-on-Record, appeared for the respondents.

The learned Counsel for petitioners, submits that against the decisions of Administrative

Tribunal, the writ petitions were not at all maintainable, the High Court Division erred in law in declaring the decisions of Administrative Tribunal void and unlawful. He further submits, that the specific provision provided in the said statute that against the decision of Administrative Tribunal, the aggrieved persons are entitled to prefer appeal before the Administrative Appellate Tribunal, the High Court Division erred in law in interfering the decisions of the Administrative Tribunal. On the other hand, Mr. Salauddin Dolan, submits that the High Court Division upon proper appreciation of the facts and law involved in the instant writ petitions rightly made the Rule absolute declaring the decisions of the Administrative Tribunal unlawful.

It appears from the decisions of Administrative Tribunal, Bogra in A.T. Cases Nos. 126 of 2011, 117 of 2011, 122 of 2011 and 124 of 2011 that the petitioners of those A.T. cases have been serving in different posts of Land Records and Survey Directorate. They prayed before the Administrative Tribunal for getting promotion in the posts of Kanungo/ Sub- Assistant Settlement Officer with retrospective effect. The Tribunal, by the impugned decisions passed the

identical order with the following words, “অত্র মামলাটি প্রতিদ্বন্দিতাকারী প্রতিপক্ষের বিরুদ্ধে দো-তরফা সূত্রে এবং অন্যান্য প্রতিপক্ষগণের বিরুদ্ধে একতরফা সূত্রে বিনা খরচায় মঞ্জুর করা হইল। প্রার্থীর পদের নাম তাহার সমপর্যায়ের পদের (ইতোপূর্বে পদোন্নতি প্রাপ্ত কর্মচারীদের পদের ন্যায়) কর্মচারীদের ন্যায় “কানুনগো/উপ-সহকারী সেটেলমেন্ট অফিসার” নিয়োগ বিধিমালাতে অন্তর্ভুক্ত করতঃ উল্লিখিত পদে পদোন্নতি প্রদানের প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য এতদ্বারা প্রতিপক্ষগণকে নির্দেশ দেওয়া গেল।”

Against those identical decisions, the writ petitioners filed the aforesaid writ petitions.

The learned Advocate for the leave petitioners, at first, submits that the instant writ petitions were not at all maintainable since there is specific provision of preferring appeal before the Administrative Appellate Tribunal against the decisions of the Administrative Tribunal, the High Court Division exceed its jurisdiction in entertaining the instant writ petitions. Since the statute provides specific provision of preferring appeal before the Administrative Appellate Tribunal, against the decisions given by the Administrative Tribunal, the instant writ petitions filed by the writ petitioner- respondents in the High Court Division were not at all maintainable, the High Court Division exceeded its jurisdiction in setting aside the impugned decisions of the Administrative Tribunal. Part VI, Chapter III of

the Constitution containing Article 117 provides,

“117.(1) Notwithstanding anything hereinbefore contained, Parliament may by law establish one or more administrative tribunals to exercise jurisdiction in respect of matters relating to or arising out of -

(a) the terms and conditions of persons in the service of the Republic, including the matters provided for in Part IX and the award of penalties or punishments;

(b) the acquisition, administration, management and disposal of any property vested in or managed by the Government by or under any law, including the operation and management of, and service in any nationalised enterprise or statutory public authority;

¹[(c) any law to which clause (3) of article 102 applies.]

(2) Where any administrative tribunal is established under this article, no court shall entertain any proceedings or make any order in respect of any matter falling within the jurisdiction of such tribunal:

Provided that Parliament may, by law, provide for appeals from, or the review of, decisions of any such tribunal.”

The aforesaid provisions empower the Parliament to enact law providing for the adjudication of the service disputes. Article 117(1) clearly contemplates that the Administrative Tribunals shall be constituted by the law enacted by the Parliament to exercise jurisdiction for all the matters relating to or arising out of the terms and conditions of persons in the service of the Republic. Proviso of Article 117(2) provides specific provision of preferring appeal against the decision of the Administrative Tribunal and law enacted by the parliament provided the provision of preferring such appeal. That the decision of the Administrative Tribunal will be subject to scrutiny before Administrative Appellate Tribunal within its jurisdiction. It is true that under our constitutional scheme, only the constitutional Court has been vested with the power of judicial review but in the instant case the writ petitioners have challenged the appealable decisions of the Administrative Tribunal.

It appears from words used in the order of the High Court Division that the Administrative Tribunal by its decision directed the concerned authority to take steps by amending respective

"Bidhimala" for giving promotion of the writ petitioners in the post of Kanungo/ Sub-Assistant Settlement Officer. In fact, by the impugned order, the Administrative Tribunal directed to amend the law in giving positive relief of the writ petitioners which can not be allowed. The Administrative Tribunal cannot direct the Government to amend the law as well as it cannot direct the Government to give promotion of the writ petitioners in the post of Kanungo/ Sub- Assistant Settlement Officer because the promotion is not a right.

However, the writ respondents may consider the case of writ petitioners following the provisions of law, if they are at all entitled.

With observation made above, this civil petition for leave to appeal is disposed of. The judgment and order dated 29.03.2017 passed by the High Court Division in Writ petition Nos.9988 of 2015, 9987 of 2015, 6628 of 2016 and 10946 of 2013 are hereby set aside.

C.J.

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